

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FAFARD REAL ESTATE &
DEVELOPMENT CORP.,

Plaintiff/Defendant-in Counterclaim

VS.

METRO-BOSTON BROADCASTING,
INC.,

Defendant/Plaintiff-in-Counterclaim

Civil Action No. 04-11531 RGS

**AFFIDAVIT OF ERIK P. BARTENHAGEN IN OPPOSITION
TO FAFARD'S MOTION FOR SUMMARY JUDGMENT**

1. I am an attorney with the law firm of Nutter, McClennen and Fish, LLP, attorneys for Defendant and Plaintiff-in-Counterclaim Metro-Boston Broadcasting, Inc. (“Metro-Boston”) as general partner of Tower Sites Limited Partnership (“Tower Sites”) in this action. I am submitting this Affidavit in connection with Tower Sites’ Opposition to Plaintiff and Defendant-in-Counterclaim Fafard Real Estate & Development Corp.’s (“Fafard”) Motion for Summary Judgment.

2. Attached as Exhibits A, B and E are true and accurate copies of selected pages of the depositions of Richard E. Terrill taken on January 27, 2005, of Mary Heller Halcomb taken on February 1, 2005 and of Paul J. Beattie taken on February 2, 2005, respectively, in this case.

3. Attached as Exhibit C is a true and accurate copy of a chalk based on certain trial exhibits that compiled and summarized information concerning each of the 25 instances that Fafard requested an extension to the P&S Agreement. This chalk was originally submitted

to the Court as Exhibit B to Tower Sites' Proposed Findings of Fact and Rulings of Law dated April 4, 2005.

4. Attached as Exhibit D is a true and accurate copy of a chalk summarizing certain trial exhibits in which Fafard states that it "needs" access to Sewall Road. This chalk was originally submitted to the Court as Exhibit A to Tower Sites' Proposed Findings of Fact and Rulings of Law dated April 4, 2005.

5. Attached as Exhibits F and H are true and accurate copies of affidavits signed by Mary Heller Halcomb dated June 24, 2004 and September 19, 2005, respectively, and submitted to the Court in this case.

6. Attached as Exhibit G is a true and accurate copy of a letter dated March 29, 2005 from Jeffrey J. Upton, counsel for Fafard, to Kenneth R. Berman, counsel for Tower Sites.

Signed under the penalties of perjury this 13th day of January, 2006.


Erik P. Bartenhagen